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ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS
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Cook County State's Attorney)

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Motion for Stay of Commencement of
Customer Education and Order)

)

Requiring Neustar to Demonstrate that
the 847 NPA is, in fact, Exhausted)

)

ICC Docket No. 01-0066

CHIEF CLERK'S OFFICE

THE STATE'S ATTORNEY OF COOK COUNTY
APPLICATION FOR REHEARING

NOW COME the People of Cook County, ex. rel. RICHARD A. DEVINE, State's Attorney of Cook County, (hereinafter "Applicant") pursuant to Sections 200.880 of the Illinois Commerce Commission's ("Commission's" or "ICC's") Rules of Practice, and hereby submit this Application for Rehearing in the above-captioned proceeding and respectfully request that the Commission reconsider and amend its decision in this proceeding, pursuant to Section 10-113 of the Public Utilities Act. 220 ILCS 5/1-101 et. seq. (West 1986). In support of this Application, the Applicant states the following:

I. INTRODUCTION

On May 9, 2001 the Commission issued an Order in which, *inter alia*, it made the following determinations: that questions put to the hearing examiners ("the Examiners") for determination in this docket as specified in their March 15, 2001 ruling for this case be withdrawn; that with the withdrawal of said questions, this docket is now closed; and that subject to the provisions of Section 10-113 of the Public Utilities Act ("PUA") and 83 Ill. Adm. Code 200.880, this Order is final.

For the following reasons, the Commission should grant rehearing to modify its Order in accordance with the specific requirements of the PUA and to include the reasoned analysis which Illinois courts have stated is necessary to legally sustain administrative orders and to which utility consumers and the People of Cook County are entitled.

II. Argument

A. The Commission's Order violates Section 10-201(e)(iv)(c) of the PUA because it is Contrary to State Law

The Order's findings warrant reversal under Section 10-201(e)(iv)(c) of the Public Utilities Act. That provision reads, in pertinent part :

The court shall reverse a Commission rule, regulation, order or decision, in whole or in part, if its finds that:...C. The rule, regulation, order to decision is in violation of the State or federal constitution or laws...

As more fully explained in Applicant's Brief on Exceptions to the Hearing Examiners' Proposed Order at paragraph 6, pages 3-4; paragraph 7, pages 5-6; and paragraph 9, pages 13-15 ("Brief on Exceptions" or "Exceptions") which the Commission adopted as its Final Order ("Order"), the Commission's decision to close this docket for the stated purpose of allowing the Commission Staff ("Staff") to address the "issues surrounding NXX code exhaust in NPA 847" informally is contrary to Illinois law. (see, Order at 5,7-8)

The Commission's actions in this regard represent a summary dismissal of the pleadings which Applicant duly filed in accordance with 83 Ill. Adm. Code Sections 200.190. As argued in Applicant's Exceptions (par. 7, pp. 5-6; par 9, pp. 12-13), and in its Reply to Response to Motion for Subpoena Duces Tecum and Response to ICC Staff's Motion to Withdraw (pp. 11-

14), closing this docket at this juncture, would constitute a violation of due process.¹ Further, as described at length in Applicant's Exceptions and prior pleadings, the issues that the Order purports to allow Staff to address "informally" are the subject of ongoing legal proceedings in a contested case, ICC Docket 98-0847. (Exceptions at par. 6, pp. 3-4; par. 8, pp. 6-7; par. 9, pp. 7-8, 13-15. As such, any communication either directly or indirectly between Commission employees who are engaged in investigatory, prosecutorial or advocacy functions and members of the Commission, any hearing examiner in the proceeding, or any Commission employee who is or may be reasonably expected to be involved in the decisional process of the proceeding are prohibited by Section 10-103 of the Public Utilities Act. 220 ILCS 5/10-103. The Commission has erred in its assumption that it and Staff may operate free of the constraints of Section 10-103 once this docket is closed. The Commission relied on this erroneous assumption in its decision. Therefore its unexplained claim that "judicial economy" is advanced by ordering Staff to conduct an informal investigation into 847 exhaust issues is erroneous and would not be sustained on review.

Summary dismissal of Applicant's pleadings contravenes the Commission's rules of practice as stated in 83 Ill. Adm. Code sec. 200.20, 200.25. No objection to the pleadings was raised by any party or by the hearing examiners, or the Commission, by motion. No Motion for Bill of Particulars was filed by any party or by the hearing examiners, or the Commission, yet the Order claims that "Cook County alleged no independent facts supporting an investigation into whether 'all conservation methods have been followed.'" Order at 6. No motion to dismiss was

¹ Reply to Response to Motion for Subpoena of the Cook County SAO, ICC Docket 01-0066 (March 12, 2001).

filed based on any alleged defect in the pleadings. Nonetheless, the Commission effectively dismissed the pleadings and closed the docket without notice, and without allowing Applicant an opportunity for a hearing. For these reasons alone, rehearing should be granted.

B. The Commission's Order does not Contain Analysis Sufficient to Allow an Informed Judicial Review of the Commission's Rulings

By failing to provide sufficient explanation or legal basis for its decision in items (a)-(d) below, the Order lacks the legally requisite analysis needed to determine the Commission's reasoning and therefore is insufficient to sustain the Order on review. Although the Commission need not make findings on every issue of fact, it is required to state facts essential to its rulings in a manner that enables the Appellate Court to intelligently review the decision. Business and Professional People for Public Interest v. ICC, 279 Ill. App.3d 824, 665 N.E.2d 553, 216 Ill.Dec. 493 (1st Dist. 1996), appeal denied 168 Ill.2d 584, 671 N.E.2d 727, 219 Ill.Dec. 560. Moreover, because the Act obliges the Commission to provide "findings and analysis sufficient to allow informed judicial review," the Commission must set forth more reasoning and analysis than would be acceptable from a circuit court. CUB and the People of Cook County v. ICC, 291 Ill. App.3d 300,304, 683 N.E.2d 938,943, 225 Ill. Dec. 435, 440 (1st Dist. 1997). These principles are even more compelling when applied to legal findings of the Commission. A reviewing court is not bound to give the same deference to an agency's decisions as to questions of law as to its findings of fact. Chicago and North Western Transportation Co., 230 Ill.App2d at 819. Findings of an agency as to questions of law are reversible if the reviewing court finds them to be legally erroneous. Id. at 815.

The Order makes several legal determinations but fails to provide a sufficient basis for

them, including the following: a) the State's Attorney of Cook County's arguments as to what is required for a contested or investigative or other type of formal proceeding are "meaningless to the situation at hand" (Order at 7); b) there are "no allegations pending in any proceeding before the Commission to which Cook County is able to attach itself," and therefore no outstanding issues to decide in the case (Id. at 6); c) there is "no good reason to leave open this proceeding" (Id. at 7) and; d) the Docket can therefore be closed (Id. at 8). For the following reasons, the Commission's Order violates Section 10-201 (e)(iii), which requires a reviewing court to remand an order which "does not contain findings or analysis sufficient to allow an informed judicial review thereof . . ." 220 ILCS 5/10-201(e)(iii).

As addressed in Applicant's Brief on Exceptions at pages 1-16, the Commission's Order fails to adequately discuss, analyze, or address the vast majority of Applicant's pleadings. In failing to provide a meaningful analysis of the legal and factual issues Applicants raised in its pleadings, the Commission's Order warrants remand or reversal on appeal. Applicant's original Motion for Stay, which according to the Order, was the genesis of docket 01-0066,² asked the Commission to require Neustar to demonstrate that the 847 NPA was truly exhausted. The Commission has not directed Neustar to do so in this docket, but claims that "the Commission's actions of February 15 and 16, 2001, gave Cook County the relief sought in its Motion." Order at 6. The Order describes the Commission's actions of February 15th (letter rejecting new area code and directing Neustar to reevaluate the status of 847 exhaust) as "independent of anything in this docket." Id. at 2. The Commission also refers to its Interim Order of February 16 in this docket

² Order at p. 1

wherein it reclassified as assignable nine NXX codes that previously were "unassignable." Order at 2. The Commission action granted only part of the relief sought by Cook County in its Motion for Stay, and fails to provide adequate analysis for the denial of Cook County's requested relief.

The Order states that Staff "informs" that they are addressing the issue of 847 exhaust informally. Order at 5. For that reason, and for the stated purpose of supporting "the interests of administrative economy" (Order at 7) the Commission has determined that: a) the State's Attorney of Cook County's arguments as to what is required for a contested or investigative or other type of formal proceeding are "meaningless to the situation at hand" (Order at 7); b) there are "no allegations pending in any proceeding before the Commission to which Cook County is able to attach itself," and, therefore, no outstanding issues to decide in the case (Id. at 6); c) there is "no good reason to leave open this proceeding" (Id. at 7) and; d) the docket can therefore be closed.(Id. at 8).

The Order merely claims administrative economy requires closure, but provides no explanation why, and provides no legal support for the claim. The Order fails to examine the pleadings: first, that the ICC has a duty in the instant docket as well as ICC Docket No. 98-0847 to investigate whether a new area code is needed; second, that there is evidence that indicates that carriers have violated conservation measures; and third, that the State's Attorney of Cook County requires access to the data to either prove or disprove said allegations. If the allegations prove true, Cook County and its citizens have suffered injury and have a right to redress those injuries and mitigate or prevent further, similar injury. Without access to the data, Applicant is blocked from performing its Constitutional duty to protect the interests of Cook County and its citizens in the fair, judicious, and effective administration of telephone numbering resources and

will be thereby prejudiced if the Commission does not grant rehearing.

In addition, the Order makes other legal conclusions that find no basis in law and does not attempt to supply any legal basis for them. Most striking is the Order's conclusions that: (1) Cook County did not raise the issue of conservation measures being violated; and (2) that because allegations in CUB's Motion were part of a document "not technically filed" but distributed to 98-0847 parties and publicly reiterated before the Commission in open meetings, Cook County cannot rely on the merits of those allegations. As argued in previous pleadings, even if CUB's allegations were not technically filed, the exact same allegations were presented in CUB's written and oral report of February 13, 2001 to the Commission at an open meeting. See, Cook County Brief on Exceptions at par. 9, pp. 8-11. This is an unprecedented favoring of form over substance by the Commission. It has no support in law. And the Commission should not uphold it in considering this Application for Rehearing. Applicant discussed this at length in its Exceptions and prior pleadings, and therefore will not reiterate the discussion here.

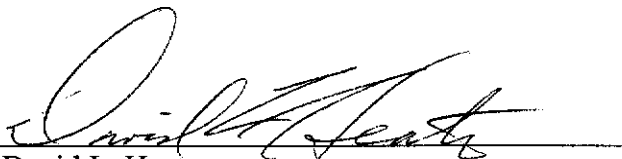
In conclusion, the Order does not present the reasoned analysis required of courts, and administrative agencies in order to sustain a ruling on review. The Order provides insufficient analysis of the basis for its determinations outlined in items (a)- (d), above and items (1) and (2) above. Further the Order violates state law and should be modified in accordance with Applicant's Exceptions. For these and all the reasons set forth in Applicant's Exceptions and prior pleadings referenced therein (pp3-4) in this docket, rehearing should be granted.

WHEREFORE, for the foregoing reasons, and for the reasons set forth in this Application for Rehearing, Cook County's Brief on Exceptions, and the prior pleadings referenced therein, the People of Cook County, ex. rel. RICHARD A. DEVINE, State's Attorney of Cook County respectfully request that the Commission grant rehearing.

Respectfully submitted

RICHARD A. DEVINE
State's Attorney of Cook County

Dated: June 11, 2001

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**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Cook County State's Attorney's

**Motion for Stay of Commencement of Customer
Education and Order Requiring Neustar to
Demonstrate that the 847 NPA is, in Fact, Exhausted**

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Docket No. 01-0066

NOTICE OF FILING

PLEASE TAKE NOTICE that on this date, June 11, 2001, we have filed with the Chief Clerk of the Illinois Commerce Commission the enclosed Application for Rehearing of the People of Cook County in the above-captioned docket.

RICHARD A. DEVINE
State's Attorney of Cook County

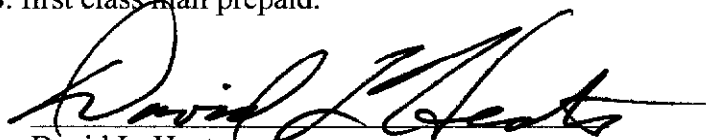
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CERTIFICATE OF SERVICE

I, DAVID L. HEATON, hereby certify that a copy of the enclosed Application for Rehearing of the People of Cook County was served on all parties on the attached list on the 11th day of June 2001, by hand delivery or U. S. first class mail prepaid.



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